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**PUBLIC CONSULTATION IN
ENVIRONMENTAL DECISION-MAKING:
A REVIEW OF MOE ACTIVITY**

Report of the
MOE Task Force on Public Consultation

MAY 1986

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**REPORT OF THE
MOE TASK FORCE ON PUBLIC CONSULTATION**

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MOE TASK FORCE ON PUBLIC CONSULTATION

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EXECUTIVE SUMMARY

Increasingly, the public expects to have meaningful input into public policy decisions, particularly in matters related to environmental policy. Public involvement in policy-making has been shown to provide a range of important benefits, such as improving the quality of decision-making, providing an effective forum for resolving controversial issues and enhancing the credibility of public agencies. Both the need and the value of public involvement have been established and experience gained over the past several decades has shown how to do public consultation effectively.

Consistent with the government's current commitment to broadening opportunities for public involvement in policy matters, a staff-level Task Force on Public Consultation was established within the Ministry in November 1985 to review the effectiveness of Ministry public consultation activities and to make recommendations for new policy and other initiatives aimed at improving these efforts.

Based on its review, the Task Force has drawn the following general conclusions:

- To the extent that the Ministry has undertaken specific consultation efforts consistent with the general principles of public consultation, these efforts have been successful in fulfilling the Ministry's objectives for obtaining constructive input and improving decision-making, as well as satisfying the public's expectation for input into decision-making.
- Ministry efforts have not been successful where the consultation process has not been appropriately designed

and carried out. Shortcomings identified in consultation efforts include:

- insufficient emphasis has been given to doing pro-active consultation, which entails anticipating rather than reacting to public concerns;
- consultation activities have typically been undertaken on an ad hoc basis, with a lack of consistency across issue areas, regions and over time;
- responsibility for public consultation within the Ministry is not always clear and the limited staff expertise has not always been used efficiently;
- in some cases there has been a failure to follow through in completing the consultation process and provide feedback to the public; and
- there has been a lack of attention to evaluating consultation efforts and learning from previous experience.

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- . The major limiting factor in the effectiveness of Ministry efforts has been insufficient policy direction with respect to the manner and scope of public consultation to be undertaken by the Ministry. This has resulted in both uncertainty in how to proceed and the lack of a sustained commitment to public consultation.
- . The general consensus model of public consultation (outlined in the Niagara Institute Report reviewed by the Task Force) has been used in various forms by the Ministry and has proven to be an effective approach in appropriate situations.

Based on the review and conclusions presented in this report, the Task Force makes the following recommendations for improving the Ministry's public consultation efforts:

1. ADOPT A CORPORATE POLICY THAT ESTABLISHES THE MINISTRY'S COMMITMENT TO PUBLIC CONSULTATION, BASED ON THE PRINCIPLES AND CONCLUSIONS IN THIS REPORT.
2. IDENTIFY THE RESOURCES REQUIRED TO IMPLEMENT THE POLICY.
3. OBTAIN PUBLIC COMMENT ON THE POLICY PRIOR TO ITS ADOPTION.
4. DEVELOP SPECIFIC GUIDELINES ON HOW TO DO PUBLIC CONSULTATION, TO SUPPORT IMPLEMENTATION OF THE POLICY BY MINISTRY STAFF.
5. PROCEED WITH ONGOING PUBLIC CONSULTATION INITIATIVES WHILE THE POLICY IS UNDER DEVELOPMENT, IN ACCORDANCE WITH THE PRINCIPLES OF EFFECTIVE PUBLIC CONSULTATION.
6. GIVE PRIORITY TO THE DEVELOPMENT OF A PUBLIC CONSULTATION PROCESS TO BE USED IN SETTING ENVIRONMENTAL STANDARDS, ADDRESSING SPECIFIC ISSUES IDENTIFIED IN THIS REPORT.
7. ESTABLISH A MINISTRY WORKING GROUP TO COORDINATE IMPLEMENTATION OF THE ABOVE RECOMMENDATIONS.

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INTRODUCTION

Across North America today, an increasingly well-educated and informed public wants and often expects to have input into public policy development and decision-making. This, to a large extent, is in response to declining confidence and trust in government and other institutions to act in the broad public interest. With respect to environmental policy, the demand for public involvement is particularly strong, for several reasons:

- threats to environmental quality are a major source of public concern; consistently ranking second in opinion polls only to unemployment;
- the absence of a consensus within our society on the priority of environmental versus other goals (e.g., economic) requires some mechanism for ensuring government accountability and responsiveness to diverse and often competing interests;
- environmental hazards are typically more unfamiliar and threatening to the public than other types of hazards, making them less acceptable; and
- widespread uncertainty and disagreement on the scientific aspects of many environmental issues has eroded public confidence in experts.

Governments have, in varying degrees, responded to the public's demand for greater involvement by gradually expanding opportunities for public input on environmental matters. Today, the need for and value of public involvement in policy making has been firmly established and the issue is no longer

whether or not to involve the public, but how to do so effectively.

By providing the public with an opportunity to become involved in the decision-making process and to influence decisions, public consultation provides a number of important benefits.

Public consultation:

- improves the quality of decisions by providing for broader input (e.g., technical information, local considerations, important values) from relevant interests and perspectives, thereby increasing the likelihood of reaching decisions that are widely acceptable;
- provides a forum for resolving highly complex issues;
- expands both the public's understanding of technical and public policy issues, as well as government's appreciation of the public's views;
- satisfies growing public expectations for involvement in key areas of public policy;
- minimizes public fears and adverse social-psychological impacts resulting from local environmental problems;
- provides a basis for establishing the credibility of public agencies and government policies, as well as fostering a positive, constructive relationship between government and the public; and
- reduces the overall time and resources required to implement decisions by addressing public concerns up front, minimizing the likelihood of lengthy confrontation once decisions are announced.

In Ontario, the Ministry of the Environment has, over the past several years, undertaken public consultation activities in a number of areas. Overall, these efforts appear to have been worthwhile. Nevertheless, there are currently no broad-based policies or structures to ensure that consultation is done on an ongoing and consistent basis. An earlier review of public involvement in environmental decision-making across Canada concluded that the existing framework for public consultation in Ontario:

does not provide broad-based public access through an integrated, on-going public participation process. Rather, public access is intermittent, unrelated to an overall process and is usually project-related. Public interaction with the Ministry tends to occur at times of crisis (e.g., the Cayuga-Dunnville decision), and is therefore characterized by confrontation and debate (Dutka, 1982).

While such confrontational experiences are not unique to Ontario, Dutka points out that other provinces, notably Alberta and Saskatchewan, have established ongoing consultation processes which in practice have greatly enhanced the quality of interaction between government and the public. At the federal level, Environment Canada has adopted a corporate policy which guides that department's public consultation activities.

More recently, the Ontario Government has publicly placed a new priority on expanding opportunities for broad consultation on important public policy matters. Consistent with this priority, senior management within the Ministry of the Environment identified the need to review the Ministry's public consultation activities to date and, in November 1985, established a Task Force on Public Consultation to address this need. The Task Force was placed under the direction of Corporate Policy and Planning and includes representatives from other Divisions and the Communications Branch. The mandate of the Task Force was defined by three objectives:

1. Review the recently-completed report on "Principles and Protocol of Meaningful Consultation" prepared by the Niagara Institute Consultation Project, and identify its applicability to Ministry activities.
2. Review the effectiveness of Ministry activities to date pertaining to public consultation.
3. Make recommendations with respect to new policy and other initiatives aimed at improving the Ministry's public consultation efforts.

This report presents the findings and recommendations of the Task Force and covers the following areas:

- an overview of the key principles underlying effective public consultation;
- a brief overview of the Niagara Institute report;
- a summary of the Task Force review of selected Ministry consultation activities, emphasizing a constructive evaluation of previous efforts to identify what lessons can be learned; and
- presentation of recommendations for improving Ministry consultation activities.

Definitions. The following definitions are provided to clarify terms and concepts used throughout the report.

Public is defined broadly as all affected or interested groups, including municipalities, industry, organized public and corporate interest groups and the general (unorganized) public.

Public Involvement is a general term describing government-initiated interaction with the public which may include public consultation and/or public information.

Public Consultation is defined as an ordered process involving interactive or two-way communication between government and the public on specific issues, through which the public is given an opportunity to become informed about issues and proposals and provide input to influence decisions. Public consultation consists of four components: information, dialogue, comment and feedback (see Figure 1).

Public Information is a more narrowly defined process through which government provides relevant and timely information to the public on issues where consultation is not being sought. Examples of public information approaches include press releases and educational material (see Figure 1).

Negotiation is a voluntary process involving dialogue among parties for the purpose of joint problem-solving and reaching consensus on issues in dispute. Mediation is one form of negotiation in which an independent mediator facilitates the dialogue process.

FIGURE 1
GENERAL PUBLIC INVOLVEMENT PROCESSES

I. Public Consultation - Public consultation consists of four components:

Components:	INFORMATION	DIALOGUE	PUBLIC COMMENT	FEEDBACK
Description:	Govt. actively disseminates or provides access to relevant information to public to inform and provide the basis for constructive input.	Public and govt. engage in dialogue to clarify issues/perspectives and to work toward consensus.	Public responds to issues/proposals/information.	Govt. responds to input received and communicates with public about outcome and decisions.
Examples of Approaches:	- public notice - document depositories - information meetings - press releases	- workshops - liaison committees - mediation/negotiation	- public meetings - public hearings - written briefs	- written reports - public meetings and workshops - media coverage

The emphasis given to each component and the specific approach used will vary with each application, depending on the nature of the issues, the relevant publics and the broader political context. Review and approval of proposed undertakings under the Environmental Assessment Act, for instance, will emphasize information and public comment, while the development of an abatement strategy for a contaminated site may focus on dialogue. Some approaches may be applicable to more than one element (e.g. workshops, liaison committees).

II. Public Information - Public information typically entails only an information element, but may also involve public comment and feedback in cases where the public responds to the information provided (e.g. factual errors, significant omissions, special interest in the area).



GENERAL PRINCIPLES OF EFFECTIVE PUBLIC CONSULTATION

The value of public consultation is sometimes questioned by critics and skeptics on the basis that such efforts:

- are an inefficient means of identifying public preferences and transforming them into coherent policy (e.g., public consultation is time consuming, costly and unwieldy);
- can lead to instability and public discontent by overloading the political system with irresponsible demands and inflating expectations which cannot be met; and
- undermine government authority to act decisively and effectively, by shifting the power for making decisions from government agencies possessing expertise and experience to narrow interests.

Where these problems have occurred, it is primarily a result of an inadequate consultation effort. Effective public consultation is an involved undertaking and there are numerous reasons why it so often is not done well. But when done properly, public consultation is beneficial to all parties involved: increasing the long term efficiency of decision-making, fulfilling public expectations and ultimately strengthening government authority.

The considerable experience gained from public consultation activities over the past several decades has clarified a number of general principles for doing effective consultation which provide valuable guidance and, if followed, can assure some measure of success. The key principles for doing effective public consultation are as follows:

1. Consultation programs should be pro-active (undertaken at an early stage) and done before issues become problems and before decisions are made. Reactive efforts are invariably less effective and also less efficient because considerable resources must be committed to defending what are sometimes viewed as indefensible positions against solidified public opposition.
2. Public consultation must be incorporated into the overall planning and decision-making process from the beginning to ensure that consultation occurs at the appropriate stages.
3. Programs must be sufficiently flexible to adapt to unanticipated developments and to be responsive to the diverse (and often changing) needs of different publics. Ongoing monitoring of consultation efforts should be done so that adjustments can be made as needed, within the framework of the overall process. Flexibility also means that a variety of consultation approaches is used.
4. Two-way, interactive communication with the public must be maintained. Interactive communication should involve ongoing formal and informal channels of communication, including opportunities for personal contact. Technical information must be widely available and presented in a form the intended audience can understand.
5. The objectives and boundaries of the consultation process must be clarified at the outset. Government must clearly define for both itself and for the public what the process is intended to achieve, what decisions are open to public input, and how and when the public can participate. It is equally important that the relevant public be identified early in the design of the consultation process.

6. **Adequate time must be provided for implementation.**
Timetables for consultation programs must provide sufficient time for the public to become informed on the issues and prepare meaningful input; likewise, public consultation staff must have sufficient time to identify, contact and respond to the public.
7. **Adequate resources must be committed.** Consultation efforts require competent, properly-trained staff who are part of the policy or project planning team. The public also requires skills and resources to constructively participate; government assistance may sometimes be required to ensure this.
8. **Credibility of the consultation process is essential.** Credibility is fostered through honesty and candor by government staff, visible commitment to the broad public interest (e.g., environmental protection) and treating public participants as equals working toward common goals.
9. **Feedback must be provided to the public at key stages.** The public wants and deserves to be kept informed throughout the decision-making process. This includes being informed about the final outcome and how its input has been used.
10. **Evaluation is an integral part of consultation programs.** Evaluation of the public consultation process provides the basis for determining how well the objectives of the process have been achieved and identifying the need for changes in subsequent efforts.
11. **Public concerns must be acknowledged and treated as legitimate, whether or not these concerns are supported by technical evidence.** Experts need to appreciate that

accepting public concerns as valid does not necessarily constitute agreement, and that provision of accurate information alone rarely alters strongly-held beliefs.

Because environmental hazards can be particularly unfamiliar and threatening, attention must be paid to how information on such hazards and their attendant risks is communicated to the public. Technical and scientific information on environmental risks is often poorly understood by the lay public and is prone to distortion in media reporting. The key principle in addressing risk communication problems is to properly identify both the nature of the problem and the specific objectives of communication efforts. This, in part, entails:

- recognizing the differences in how the public and experts define the nature and acceptability of environmental risks;
- acknowledging the uncertainty of scientific estimates of risk; and
- providing risk information to the public in a meaningful format, using non-technical language wherever possible.

REVIEW OF MINISTRY PUBLIC CONSULTATION ACTIVITIES

Scope of Review

The scope of the Task Force review was defined by identifying the Ministry's major areas of functional responsibility in which specific types of public consultation either have been used or are currently proposed (see Table 1). These areas are broadly divided into policy development (broad policy direction, regulatory policy and environmental standards) and policy application (approvals, abatement and control).

Within this framework, the Task Force selected for in-depth review representative case studies of public consultation undertaken or proposed by the Ministry in each area of responsibility (these case studies are indicated in brackets in Table 1). Information on each case was obtained through documents and presentations given to the Task Force by Ministry staff. The Task Force chose not to review public hearings held under legislative authority (i.e., EAA, EPA, OWRA) because these activities are already specified by legislative requirements and the Ministry does not assume a lead role in designing or implementing these processes (although the Ministry may also play a facilitating role, as with its promotion of pre-submission consultation under the EAA).

In keeping with its defined mandate, the Task Force also reviewed the report on "Principles and Protocol of Meaningful Consultation." This report is one product of a year-long multi-stakeholder consultation project, co-sponsored by Environment Canada and the Niagara Institute, which focused on environment-economy issues.

The Niagara Institute Report (see Appendix) outlines a general consensus-building model of public consultation,

TABLE 1
CURRENT MOE PUBLIC CONSULTATION ACTIVITIES

<u>MOE AREAS OF RESPONSIBILITY</u>	<u>TYPES OF PUBLIC CONSULTATION USED BY MOE (Case studies reviewed)</u>
I POLICY DEVELOPMENT	
A. Broad Policy Direction	<ul style="list-style-type: none">- Info. Sessions/Public Meetings (Blueprint)- Symposia (Regulation Symposium)
B. Legislation and Regulations	<ul style="list-style-type: none">- Public Hearings (PCB Reg.)- Symposia (Reg. 308)- Multi-Stakeholder Negotiation (Beverage Container Policy)- Public Meetings- Written comments
C. Environmental Standards and Guidelines	<ul style="list-style-type: none">- Expert Advisory Committee (proposed standards advisory committee)
II POLICY APPLICATION (Site-Specific)	
A. Approvals (Under legislative authority: EPA, OWRA, EAA)	<ul style="list-style-type: none">- Public Hearings
B. Abatement and Control	<ul style="list-style-type: none">- Can include:<ul style="list-style-type: none">1. Control Orders2. Program Approvals3. Requirements and Directions4. Director's Orders5. Certificates of Approval. Information Sessions/Open Houses. Public Meetings. Written comments. Liaison Committees (Junction Triangle, Pottersburg Creek, PILCODWI)

consisting of ongoing dialogue among key stakeholders, often involving negotiation and mediation. This approach is increasingly being recognized as a valuable process for resolving complex environmental issues which affect a wide range of interests. The report, which itself reflects a consensus view among the wide range of perspectives participating in the Niagara Institute project (e.g., government, industry, environmental groups, labour unions), presents general principles of consultation and how such a process should be structured and implemented. The applicability of this consensus model to Ontario was considered by the Task Force in the course of its review of Ministry public consultation activities.

Broad Policy Direction

Background. In the last several years, the Ministry has initiated public consultation in the development of broad policy direction. The two cases completed to date were reviewed by the Task Force.

The Blueprint for Waste Management (1982-84) was a comprehensive public review of the province's waste management policies and practices, intended to provide a framework for developing an effective, comprehensive and understandable waste management program for Ontario. This initiative entailed both an in-house technical review and an extensive public consultation program which included small group workshops (organized for the Ministry by the Waterloo Public Interest Research Group), information sessions, public meetings, written submissions and publications. The specific objectives of the consultation program were:

- to obtain input from all major segments of the public on current waste management issues, including responses to specific Ministry proposals and options;
- to improve both the effectiveness and credibility of government waste management policies; and
- to improve the credibility of the Ministry.

The Symposium on Environmental Regulation (November 1984) was a two-day workshop on general philosophy and alternative approaches to environmental protection. The primary impetus for the Symposium was a Throne Speech commitment to consult with environmental groups and others in reviewing possible reforms to the current regulatory process. Forty individuals representing key interests across Ontario were invited to participate in this event, which consisted of small group workshops and plenary sessions guided loosely by an outline of key issues developed by the Symposium organizer and chair, Professor Paul Emond of Osgood Hall Law School. In addition to fulfilling the Throne Speech commitment, the objective of the Symposium was to generate dialogue with key interests in the province on how environmental regulations might be improved.

Evaluation of Consultation Activities. While the Blueprint and Symposium were markedly different in scope, there are several key similarities in how these activities were designed and implemented. Both efforts, for instance, focused on broad policy issues on which the Ministry identified the need for review and chose to seek input from the public.

Both activities were designed to be pro-active: to address issues before significant problems developed. This pro-active approach was successful in two ways:

- it provided the Ministry with public input at an early stage of policy and program development, a point at which such input could be considered and, where appropriate, incorporated as further development of policy ensued; and
- the consultation activities were well-received and supported by the participating public, who appreciated the opportunity to influence the outcome. For some, these efforts were viewed as an indication of a new government commitment to consider public input in developing public policy.

The informal, small group workshop format used in both the Blueprint and the Symposium provided a setting in which government and the public could develop a better understanding of each others interests and build trust. The use of a credible independent organizer to set up and run the workshops was an important factor in making them successful, in part by allowing the Ministry to assume a low profile and avoid having to defend government policy. Given the breadth of topics covered at the Symposium, the use of an independent organizer ensured that the agenda would not appear to be constrained by government priorities. Furthermore, the workshops: generated a useful dialogue through which the Ministry obtained constructive feedback on current and proposed policies; identified public positions on major issues; and developed consensus in some areas while clarifying the outstanding issues in others.

With the Blueprint, the early dialogue and input proved helpful in preparing for broader public consultation in later stages. By providing a number of opportunities for the public to provide input, the Ministry was able to effectively reach a broad range of groups and obtain from them informed and constructive input. Broad circulation of Ministry publications helped to structure the dialogue and focus this input.

The continuity of staff involvement throughout the process enhanced the opportunity for repeated informal contact with the public through which valuable input was obtained and trust was developed. The presence of a senior management representative at the public meetings provided an indication of the Ministry's commitment to the consultation process and to sound waste management practices. There was, however, a failure in some cases to adequately inform and brief regional staff, substantially limiting their effectiveness in generating public interest in the Blueprint across the province.

At the Symposium, senior management participation occurred primarily at the plenary sessions; greater involvement in the small group discussions might have been useful in sensitizing senior management to public concerns and interests, as well as providing a stronger indication of the Ministry's commitment to the consultation process.

The input obtained at the Symposium was less focused, largely because the issues were broad in scope and the participants were generating rather than responding to proposals and options. The small group discussions generated constructive dialogue and, in some cases, produced a consensus of opinion on positions or recommendations. In contrast, the plenary sessions, which were taped and open to the public and the media, were dominated by restatements of positions held by specific interests.

A significant limitation in both the Blueprint and Symposium efforts was inconsistency in senior management commitment, resulting in a lack of follow through and completion of the consultation process. Commitment to the Blueprint process was uneven through a succession of Ministers and Deputy Ministers. While the process was implemented through to the preparation of a final report, and a number of specific initiatives did result, this report was never approved, the Ministry never

proceeded further in the development of a waste management framework and feedback was not provided to the participating public on the outcome.

Similarly, the Ministry's commitment to the Symposium was never firmly established, perhaps because the main impetus came from the Throne Speech statement rather than from within the Ministry. Despite a commitment given by the Deputy Minister of the day at the final plenary session to follow up on the Symposium, release of the Symposium proceedings was delayed for six months and no further follow-up by the Ministry has been planned.

Conclusion. The two public consultation efforts focusing on broad policy direction were well-designed to achieve their objectives, but not fully successful in how they were implemented. Both achieved specific objectives aimed at generating dialogue and obtaining useful input. But, in terms of broader, long term objectives of fostering credibility and developing a more positive relationship with the public, success is less apparent because of the failure to both follow through on making decisions regarding broad policy direction and also provide feedback to the public. Successful public consultation depends on the process being followed through to its completion. Failure to do so will discredit the process in the eyes of the participating public and make it difficult for government to mount credible consultation efforts in the future. A key factor in ensuring appropriate follow through is consistent senior management commitment to the consultation process.

In looking beyond these specific case studies, the Blueprint process provides a useful model for undertaking public consultation on broad policy issues with province-wide implications. Not all consultation processes need be as extensive, and in each case the scope can be adjusted to fit

the relevant issues and the range of affected interests. The cases reviewed here demonstrate the value of small group workshops as a means of clarifying issues and generating consensus at an early stage in the consultation process. Both cases utilized elements of the consensus model outlined in the Niagara Institute report, providing an indication of this model's applicability in developing broad policy.

Regulatory Policy

Background. The Ministry has recently begun to use public consultation in the development of specific regulatory policy. Three cases were reviewed by the Task Force.

In 1983, the Ministry developed a proposed regulation to facilitate the destruction of PCB waste using mobile facilities. An extensive public consultation program was undertaken in conjunction with this proposal to provide for public input from affected communities (where significant quantities of PCBs are stored) and other interested parties across the province. The consultation process consisted of three phases: a) information dissemination (including information sessions and publications); b) public comment (written submissions, public meetings); and c) public hearings before an independent panel which made final recommendations to the Minister. This process marks the first time that a generic (versus site-specific) regulation has undergone any type of formal public consultation. The Ministry's objectives in undertaking this consultation effort were to gain broad public acceptance of the regulatory concept and to obtain useful input in the development of the regulation.

Between 1982 and 1985, the Ministry undertook a review of government policy governing the marketing of soft drink beverage containers in Ontario. Throughout this period,

public consultation was undertaken using a variety of approaches, including the circulation of a discussion paper and soliciting public comment, informal contact and meetings with a wide range of interests, a sample survey measuring the preferences of Ontario consumers, and, at the final stage, a consensus conference. The Ministry's underlying objective in undertaking these efforts was to develop a policy acceptable to competing interests and also consistent with the government's environmental quality objectives.

Finally, the Ministry is currently reviewing the province's regulatory approach to air quality management under Regulation 308 of the Environmental Protection Act. This review includes a public consultation process consisting of a workshop with knowledgeable members of the public (conducted in December 1985) and plans for broad circulation of a green paper for comment and subsequent public meetings on proposed amendments to the regulation. The Ministry's consultation objective is to obtain informed input from the knowledgeable and concerned public in order to develop a broadly acceptable regulatory policy for air quality management.

Evaluation of Consultation Activities. An important aspect of consultation activities involving regulatory policy development is the role played by the general consensus model. As with the broad policy cases reviewed above, the Regulation 308 workshop demonstrates how this model can be used early in the consultation process to identify and clarify key issues in preparation for broader consultation. In this case, the workshop appears to have effectively served this function, although this conclusion remains tentative given that the consultation process is still underway. The workshop also provides an example of a consensus model that was successfully organized and run by government staff rather than an independent party.

The consultation process used with the PCB regulation was extensive but did not include a consensus dialogue component to clarify and resolve key issues. While other steps in the process led to constructive modifications in the Ministry's proposal intended to address identified public concerns, many issues re-surfaced at the public hearing and considerable time was devoted to issues that were not points of substantial disagreement but which parties felt the need to address at the hearing. Although Ministry staff considered this hearing to be less adversarial and confrontational than most, it was nevertheless unnecessarily drawn out and reinforced the view that public hearings are not a constructive forum for public consultation or arbitration on environmental policy.

In hindsight, the application of a consensus approach early in the PCB consultation process that would have brought the key stakeholders together in a dialogue format might have provided a forum for effectively resolving side issues and clarifying outstanding ones, making possible a shorter and more productive hearing. The value of dialogue in this case was demonstrated by constructive discussions which took place among participants at lunch time gatherings during the hearing itself.

The consultation process involving the beverage container policy illustrates a case in which the consensus model was employed at the end of the consultation process, following lengthy delay in the government's attempt to formulate a broadly acceptable solution. Prior to the consensus conference, the Ministry undertook numerous efforts to identify key issues and positions through informal consultation (meetings) and soliciting feedback on the discussion paper options. While this information was useful, it was not in itself sufficient to provide the basis for identifying broadly acceptable options because this process did not provide for any dialogue between competing interests: interests focused their attention on government rather than on each other, thereby

putting the Ministry on the spot. In contrast, the final consensus conference provided a structure in which key interests dealt with each other directly. While generally no consultation process can (or should be expected to) resolve fundamental differences and values between parties in conflict, in this case the consensus dialogue provided the basis for resolving side issues and generating agreement on how to address the major ones.

Regulation-making is a natural extension of broad policy direction, but differs in that more specific decisions are required. Such decisions often prove controversial because interests are more directly affected than is usually the case with broad policy. As a result, resolution of regulatory policy issues sometimes requires some form of arbitration through which a credible body or person examines the evidence presented by interested parties and makes specific recommendations to the government. The PCB regulation is an example where arbitration was needed, in this case in the form of a public hearing. Despite its length, the hearing served an important function by providing a widely recognized means of resolving outstanding issues prior to the government's decision.

In all three cases, informal communication between government and the public played a significant, positive role in the consultation process. With the beverage container policy, informal consultation was the chief means by which the Ministry identified and monitored public positions and the likely public response to options. During the hearing on the PCB regulation, the lunch time discussions proved useful for clarifying issues. In the case of the Regulation 308 workshop, it was through informal feedback that Ministry staff became aware that some of the views presented at the workshop may not have fully reflected actual positions. These cases demonstrate that informal communication can provide a type of dialogue which

functions like a more structured consensus process (although it cannot usually substitute for the structured process) and provides an important source of information on public views and positions.

The nature and timing of information provided to the public throughout the consultation process plays an important role in effectively informing the public and providing it with something meaningful to react to. The information provided to the public on the PCB regulation was extensive, specifically prepared for the intended audience and provided at an early stage in the process. This helped to generate well-informed input from the public throughout the consultation process that was valuable to the Ministry and had a major impact on the regulatory policy ultimately adopted. The material provided in advance of the Regulation 308 workshop served to orient participants to the issues, although it was not entirely successful in this objective since some participants arrived at the workshop somewhat unclear about its focus and what issues were open for discussion.

The deployment of appropriate staff is an important consideration in implementing public consultation. In all three cases, Ministry staff responsible for the consultation process were generally capable, but not always sufficient in number to properly implement the consultation process. In the PCB case, the tight timetable imposed on the information dissemination phase created significant logistical difficulties in implementing this phase. The one person currently assigned half-time to coordinate the remaining phases of the Regulation 308 consultation process may not be sufficient to adequately handle the required workload.

As with broad policy direction, continuing senior management commitment and follow through are important prerequisites to effective consultation on regulatory policy. The PCB case is a

positive example of commitment to the process, a commitment which remained stable even through a change in government. The feedback provided to the public in both the final Ministry proposal and the Hearing Panel Report clearly indicated the basis for the decisions that were made and how the public's input was considered. With respect to the beverage container policy, the absence of a clear management commitment to public consultation early in the process was a determining factor in the ad hoc, reactive approach to consultation that was used.

Conclusion. The two completed public consultation efforts reviewed have been successful in achieving the objectives set out by the Ministry at the outset. Consultation used in developing the PCB regulation was appropriately designed and implemented although it might have benefitted from a consensus process at an early stage. Consultation provided a basis for reaching a compromise solution to the complex set of problems blocking the establishment of a new beverage container policy. This latter effort was successful, despite the absence of a planned pro-active effort. No conclusion can be drawn at this early stage on the Regulation 308 consultation process, although the workshop appears to have been valuable.

In general, these case studies indicate that the consensus model is an important component in public consultation on regulatory policy. While it appears that this approach is best utilized early in the consultation process, it is also applicable at other stages. The fact that the consensus conference was successful in generating a workable solution indicates that the consensus model can be used in reactive as well as pro-active situations, depending on the nature of the issue and the sequence of events. Consensus approaches may be organized or hosted by a credible independent party (as with the beverage container conference) or the government (Regulation 308 workshop), depending on the nature of the issues, the timing of the approach and the government's credibility with respect to the issues at hand.

Arbitration has an important role in public consultation on policy matters, particularly where significant conflicts in public views are apparent. Public hearings can make a useful contribution to informed decision-making, but in most cases should only be used as a final step following extensive consultation efforts to resolve and clarify issues through consensus and other approaches. As a rule, public hearings should be built into consultation processes as an available option to be used when needed. In those cases where hearings are not specified as a certainty at the outset, government needs to clearly identify for the public the criteria for deciding when and where a hearing option would be used.

The public's current demand for hearings as the preferred means of having input is largely due to a lack of experience and confidence in other means of consultation. Despite obvious limitations, the hearing process has an established tradition in our society and is viewed by many as the only guaranteed means of being heard. To reduce the reliance on public hearings and use them appropriately, the central challenge for the Ministry is to develop a successful record of using other consultation approaches so that these become accepted as legitimate alternatives.

Finally, the cases reviewed in this section underscore the importance of informal communication as a complement (though not an alternative) to more structured public consultation. For many groups comprising the public, informal dialogue is the preferred means of communication. Within government, the positive role of informal processes needs to be acknowledged and provided for.

A current example of where public consultation has played a critical role in the development of regulatory policy is the consultation initiated by senior management on the development of new water pollution control regulations (MISA). As part of the initial phase of this process, the Ministry has had

meetings with municipal and industry interest groups.

The next step in developing these regulations will involve an Advisory Committee, including representatives from public interest groups, and Technical Committees, including representatives from municipalities and industry. Both of these committees will advise the Ministry on the contents of the regulations. Out of these consultations, a White Paper, outlining the content, rationale and schedule of the regulatory agenda and public consultation process, will be published. Subsequently, there will be public review of and comment on the draft regulations before they are finalized.

Environmental Standards

Background. In the past several years, the Ministry has identified the need for enforceable standards to control toxic substances in the environment. There has also been growing public interest in the development of such standards and in having direct input into the process through which they are established. Recently, the Ministry has been giving consideration to proposals for establishing environmental standards which provide for public involvement through an advisory committee model.

A proposal for an Environmental Standards Advisory Committee (ESAC) was developed by the Ministry to carry out a number of key functions in the establishment of environmental standards for all routes of exposure (e.g., air, drinking water). This committee would: review scientific and socio-economic documentation; solicit public comment on the documentation and proposed standard; and make a recommendation on the proposed standard to the Minister. The committee would include members with a broad range of expertise (e.g., bio-physical, engineering, socio-economic) as well as members of the public who represent broad interests (e.g., industry, labour).

Under this proposal, the standard setting process would begin with the Ministry developing a priority list of those substances warranting the establishment of a standard, based on their toxicity, persistence and potential for exposure. At the Minister's discretion, the advisory committee would review this list and solicit input from the broader public. Once the list is adopted, the Ministry would then prepare scientific criteria documents to serve as the basis for the development of specific standards. Upon completion of each document, a public notice would then be published announcing the government's intention to establish the standard and indicating the availability of the documents for public review. At this point, the advisory committee would assume the lead role and review the documents and other relevant information, consulting with Ministry staff, outside experts and the public. Public consultation could take a variety of forms, including written submissions, informal meetings, workshops and, if requested by the Minister, public hearings. Following this review and consultation, the committee would recommend a proposed standard to the Minister.

More recently, another proposal for standard setting has been developed. This proposal originated within the Ministry (Water Resources Branch) and has been further developed by the Public Interest Liaison Committee on Drinking Water Issues (PILCODWI), a Ministry-sponsored advisory body consisting of representatives from key groups with interests in drinking water issues. This proposal also entails an advisory committee (Standards Advisory Committee) and is essentially a variation of the ESAC model, with the following differences:

- an exclusive focus on standards for drinking water quality;
- the Standards Advisory Committee (SAC) would play a more active role, assuming responsibility for the preparation of both the priority list and (through outside consultants) the scientific criteria documents; and

- the scientific criteria documents and public input would be reviewed by a technical subcommittee (appointed by SAC) which would provide recommendations to SAC.

Evaluation. The evaluation of these proposals focused in greater depth on the public consultation aspects of the standard setting proposals, with the intention of providing useful guidance at an early stage in the development of a standard setting process.

Selection of Advisory Committee Members. Both proposals provide for a review committee with members representing a broad range of technical expertise and key public interests, based on the assumption that there is a need for both technical expertise and broader interests represented. The Task Force concluded that considerable care must be taken in choosing a process for selecting these committee members, because how such members are chosen has important implications for how well the committee functions.

Establishing the Priority List. Both proposals provide for limited public consultation on the establishment of the priority list of substances. Broader public input than is provided for in either proposal will probably be required because some segments of the public will expect to have input on establishing this list and will insist on being heard whether or not an opportunity is provided at this stage. It is better to address this concern before the Ministry finalizes the priority list rather than at the point at which specific standards are being developed.

Preparation of Documentation. The major difference between the two proposals is the locus of responsibility for preparation of the scientific criteria documents: SAC would be responsible for both the preparation and review of the documents, whereas ESAC would review the work prepared by the Ministry. From a

public consultation perspective, advisory committees of this sort should not be responsible for the preparation of the material which is also their responsibility to evaluate. This is because it brings into question the ability of the committee to undertake an independent and balanced review and could, therefore, compromise the credibility of the committee and the standard setting process itself in the eyes of the public.

Public Notice. The two proposals also differ in how public notice of the standard setting process is to be provided. In one case (ESAC), the Ministry would publish a notice of intent to develop a standard and the availability of scientific criteria documents in the Ontario Gazette and in major newspapers throughout the province. Alternatively, SAC would publish both a notice of intent and the criteria document in the Gazette. The Gazette has rather limited distribution and is not well-suited to publishing detailed and extensive scientific material. Hence, while the publication of notice in the Gazette and in major papers is in itself appropriate, there will be the need to undertake more extensive efforts to publicize the notice. As well, attention must be given to ensuring that the scientific documents are widely accessible to the interested public.

Consultation Approaches. Both proposals provide for a variety of approaches to be used in obtaining public input, including written comments, dialogue (conferences, workshops) and public hearings. This variety is important, but the specific process in which they will be used needs to be well-defined at the outset so that all participants (including the Ministry) know what to expect. Moreover, given the level of public concern about environmental quality issues, some of the standards will require a public hearing to provide an accepted means of arbitration on critical scientific and socio-economic issues. It is advisable that if a public hearing option is built into the process, it be inserted at the point before a recommendation is submitted to the Minister for a final decision.

Conclusion. The general model consisting of an advisory committee which coordinates broader public input is an appropriate one for undertaking public consultation on environmental standards. It provides for issue clarification and consensus-building at an early stage (within the Committee), with subsequent input and dialogue from the broader public and the provision for arbitration prior to a final government decision. The committee structure itself provides a vehicle for reviewing the issues and proposed standards from both scientific and socio-economic perspectives.

There is, however, the need to further refine and develop the standard setting process as currently proposed, both in terms of addressing critical structural or administrative considerations (e.g., deciding what types of standards should be covered) as well as resolving the public consultation issues identified above. Moreover, because environmental standard setting will be a major undertaking with province-wide significance, the Task Force recommends that the Ministry obtain public comment on its proposed approach.

Finally, the Ministry is responsible for developing standards other than those covering substances in the environment (e.g., standards for waste facility siting). The establishment of such standards may also warrant public consultation, although the consultation process will likely differ from the type of process considered above.

Abatement And Control

Background. Abatement and control activities are concerned primarily with the application of Ministry policy, regulations and standards in controlling potential or identified pollution problems, focusing on local rather than province-wide issues.

The only abatement-related Ministry activities in which public consultation is carried out as a matter of policy are the approval of Control Orders, Program Approvals and Directors Orders (Policy 05-02). Public consultation is used in these cases to alert the local public to proposed abatement actions and provide it with an opportunity to give comments.

The consultation process employed for Orders typically begins with informal discussions between Ministry staff and the polluting company to develop a suitable abatement strategy. Staff also meet with the affected public to identify specific concerns and obtain early feedback on abatement options.

Once an abatement proposal is developed which the Ministry considers to be technically acceptable, a more structured consultation process commences with the Ministry giving public notice of the abatement proposal. Opportunities for public consultation are provided through the following:

- public information session(s) held in the community with company and Ministry representatives present to provide information and answer questions in an informal setting;
- a public meeting at which the public is invited to comment on the abatement proposal. These meetings are organized by the Ministry but are sometimes chaired by a local community leader; and
- a 30-day comment period follows the public meeting, during which the public can submit written comments to the Regional Director and receive a written reply (few such submissions are actually received). Abatement proposals may be revised as a result of the public's input.

An internal Ministry committee on Ministry Orders and Conditions of Approval (MOCA) is currently considering the

application of public consultation requirements to the granting of Certificates of Approval. Apart from Certificates for waste facilities covered under Part V of the EPA, which in most cases require a public hearing, consultation on Certificates has been undertaken only in a few special cases (e.g., Hemlo mines). Consideration is now being given to extending public consultation to Certificates of Approval on a regular basis because the committee feels this is an area of the regulatory system which should be more open to public scrutiny, a position consistent with the current emphasis on open government and which the committee feels would enhance the credibility of the Ministry and its approval requirements.

MOCA decided that public consultation on Certificates of Approval should be undertaken in a few selected cases on a trial basis in order to assess the feasibility of a broader policy initiative. The consultation approach to be used in these cases will be based largely on the one used for Orders, with the following differences:

- once the Certificate is deemed technically acceptable, the Ministry would send a notice to the municipality and request that it notify the affected public (e.g., property owners adjacent to the site);
- once notice was given, a 30-day comment period would be provided during which the public could submit written comments or visit the local Ministry office to discuss the Certificate with staff; and
- following this period, the Regional Director would decide, based on the comments received, whether or not a public meeting is warranted. If so, the Ministry would set up the meeting and ask the industry to attend to present its case for the Certificate and respond to the public's questions.

MOCA believes the purpose of this consultation process should be to provide input on terms and conditions placed on the Certificate, but not on whether or not it should be granted. This is because an approval is made on technical grounds and a Certificate would not proceed to consultation until the Ministry had decided that the technical merits had been established. Because the Ministry processes thousands of applications for Certificates each year, the committee believes that resource limitations would require that the full consultation process (including a public meeting) would have to be used selectively. The committee is currently selecting cases in which to apply the proposed consultation approach.

Evaluation. The Task Force reviewed the general consultation approach used for Orders (rather than specific meetings) and found this process to be well-suited for fulfilling its objectives. The process is pro-active, beginning as soon as the need for an Order is determined. It is multi-faceted and provides for both formal and informal opportunities for public input. The early informal dialogue between the Ministry and affected groups may be the crucial step in identifying and resolving key issues (consensus building), while the public meeting provides a final, more broad-based opportunity for the public to comment. The process appears to satisfy the public's desire for input and, in most cases, this input has had a significant impact on the final decision or outcome, particularly where local quality of life has been an issue. The media has typically provided balanced coverage during the consultation process, with any bias usually in favour of the Ministry.

These benefits notwithstanding, this consultation approach is time consuming for Ministry staff: up to six weeks of advance work is typically required to prepare the groundwork for a public meeting.

Because proposed works for which Certificates of Approval are required will in some cases have significant public impact, public consultation on the application for such works at the proposal stage should be considered. However, the consultation process approach employed in this case must be appropriately designed to accommodate logistical demands connected to the approval of Certificates. First, the large number of Certificates reviewed each year (approximately 2,000) limits the extent of consultation that can be done on each application without severely overloading current staff resources. Although many applications are for minor works unlikely to cause significant public concern, the public may be unwilling to accept the Ministry's judgement on which Certificates warrant consultation and which do not. This could result in the public pressuring the Ministry into undertaking extensive consultation on every Certificate.

Furthermore, the Ministry must also be prepared to address public concerns that go beyond the issue of conditions and that question whether or not the Certificate should be granted. However much the Ministry stresses that the focus of the consultation is on terms and conditions, the public will sometimes have more basic concerns and will insist on expressing them. Under such circumstances, the public may not accept the consultation process as legitimate unless these concerns are considered by the Director.

Finally, the Ministry should not rely on municipalities to assume the task of notifying the local public about proposed works. Municipalities have no legal responsibility for Certificates of Approval and are, therefore, likely to be hesitant in assuming the responsibility for notifying the public. The Ministry should provide such notice but keep municipal officials fully informed and encourage their involvement in the process. Responsibility for the consultation process may be delegated to larger municipalities

in those cases where the approval process itself has been delegated.

Liaison Committees. Some abatement issues are complex, not limited to one industry and entail ongoing issues of intense public concern. In response to such situations, the Ministry has in recent years employed a consultation approach consisting of a local liaison committee. A liaison committee is a voluntary advisory group formed by the Ministry and includes representatives from government, industry and other local affected interests. The purpose of such groups is to provide an informal forum through which concerned parties can meet face-to-face to develop commonly acceptable solutions to specific environmental problems in the community. They are typically used in a reactive mode--employed once other attempts to resolve contentious issues have failed and the local public has mobilized. In a few cases, a liaison committee has been formed at an early stage, before major controversy developed (e.g., Elmira).

Liaison committees represent one form of the general consensus model but differ from other forms in that the Ministry plays a more central role, because abatement issues (in contrast to regulatory and policy matters) often require timely action. Liaison committees are primarily advisory in function, but provide an opportunity for the participating public to learn about the issues and to develop informed recommendations through ongoing dialogue with the Ministry. Ongoing Ministry participation on liaison committees helps to ensure that committee recommendations are consistent with government policy and, therefore, feasible to implement. The importance of such participation is supported by a recent study of dispute resolution cases in the U.S., which found that participation by those with authority to implement consensus agreements was the most significant factor determining the success with which such agreements are implemented (Bingham, 1986).

The Task Force examined two examples of local liaison committees. The Junction Triangle Liaison Committee was formed in 1983 in response to a long history of residents' concerns and dissatisfaction with both the environmental quality in their neighbourhood and the Ministry's abatement actions. The Pottersburg Creek Liaison Committee was established in 1981 in response to the discovery of significant pollution in a London area watercourse.

In both cases, the liaison committee approach has been effective in addressing local concerns about environmental problems. This approach incorporates the general consensus model and also provides for dialogue and consensus-building to continue on an ongoing basis, however long it takes to address the problems at hand. This ongoing aspect of liaison committees ensures that constructive feedback and follow-up can take place among the participants.

As with public consultation on Orders, however, the implementation of these local liaison committees have required a significant time commitment by Ministry staff, who have been an important factor in their success.

The Task Force also considered an example of a different type of liaison committee, one formed to address general rather than local environmental problems. The Public Interest Liaison Committee on Drinking Water Quality Issues (PILCODWI) was established by the Minister of the day in the spring of 1984 in response to growing public concern in Toronto and the Niagara area about drinking water quality. PILCODWI was established to channel public concerns and provide a forum for reviewing drinking water quality issues and proposed actions.

PILCODWI includes representatives from a number of key interest groups (including environmental groups), some of which have already established strong public positions on drinking water

issues. For these groups, the liaison committee has sometimes provided an avenue for asserting their positions rather than working with other interests toward common solutions. But this committee has also proven to be a forum through which the members could gain a better understanding of each others perspectives and values.

Because the committee was composed of members with divergent views on water quality issues and also because it was given a very broad mandate, in the beginning there was a lack of focus and agreement among members on the purpose of the committee. Over time, however, a common purpose gradually emerged.

In general, the liaison committee approach may be more difficult to utilize effectively in addressing general versus local environmental issues because the issues themselves are not usually as clear and there is often less incentive and pressure to resolve them quickly. Such committees may be more effective at the local level because the issues have direct, local impacts so that the public is more committed to resolution of the problem(s) and is, therefore, more likely to recognize and accept the need for compromise in reaching workable solutions.

Conclusion. The public consultation process currently used for local abatement Orders has been effective where it has been applied and is potentially applicable to other areas, such as the granting of Certificates of Approval. Consultation on abatement will necessarily vary in scope and extensiveness, depending on the nature of the issues and local conditions. Choosing the proper scope should remain a matter of judgement for regional staff.

The Task Force concluded that MOCA's proposal to incorporate some form of public consultation into Certificates of Approval has merit, but how this is to be done should be given careful

consideration. While the process used for Orders may be generally applicable to Certificates, specific attention needs to be given to designing a process that is suitable for the approval of Certificates. It is essential that this process be tested in several trial cases and that these efforts be carefully evaluated in order to assess the feasibility of implementing such a process on a broad scale.

The liaison committee approach is an effective consultation approach for addressing more intractable local pollution problems, particularly in situations where other forms of consultation may prove insufficient. Liaison committees can be employed in either a pro-active or reactive mode. One pro-active application would be to use such committees to resolve issues involving approvals for which public hearings will be required. In general, liaison committees are established primarily as a reactive approach because the necessary level of interest and commitment among the affected public often does not occur until problems have clearly surfaced. However, these same committees can be pro-active in that they address other issues that are not yet problems.

Because liaison committees are time consuming, however, the Ministry should not rely solely on this approach to resolve local problems. To the extent that potential problems are anticipated and addressed early, before they become major problems, the need for liaison committees should be reduced.

Liaison committees can also be used to address broad policy issues, but to be effective they must be structured in a way that does not simply create a forum for established interests to promote non-negotiable positions. This requires that committee members be chosen to participate as individuals (rather than as group representatives) whose primary responsibility is to fulfill the committee's objectives, regardless of whether or not they are members of organized interest groups.

Liaison committees will in many cases need to be complemented by other consultation approaches which reach a broader range of public interests. On issues of major public concern, it is not reasonable to expect that a handful of committee members can adequately represent all public views.

CONCLUSIONS

Overall, where the Ministry has undertaken consultation in a manner consistent with the general principles of public consultation, these efforts have been successful both in fulfilling Ministry objectives and in satisfying the public's desire for input on issues of concern. This input has made a positive contribution to government decision-making by resolving controversial and difficult issues in a way that is responsive to public concerns and broadly acceptable to those affected. Moreover, while the media plays a significant role in environmental issues which at times can be negative (e.g., by misinforming the public), media coverage of Ministry-initiated consultation activities has generally been favourable.

Despite some noteworthy achievements, Ministry consultation efforts have not been successful where the consultation process has not been appropriately designed and implemented. The major limitation has been insufficient policy direction given to the manner in which public consultation has been undertaken by the Ministry. This has resulted in considerable uncertainty in both when and how to proceed with consultation in the context of fulfilling the Ministry's mandate. Consultation efforts have typically been done on an ad hoc basis, with a lack of consistency across issue areas, regions and over time. Responsibility for public consultation within the Ministry has at times been unclear and the limited staff expertise has not always been used efficiently.

In general, the Ministry has not given sufficient attention to the feedback and follow through on requirements of public consultation. Failure to provide feedback to the public on Ministry decisions and the impact of public input deprives the public of important information and compromises the integrity of both the consultation process and the Ministry, thereby

threatening the very objectives of undertaking such consultation. Moreover, without obtaining feedback on the process from the public, the Ministry has no way of gauging the impact or value of the process to the public, and where and how its programs may need to be modified in the future. Finally, the effectiveness of public consultation requires that there be resolution of the decisions or issues under consideration.

While the Ministry has in recent years begun to do consultation on a pro-active basis rather than rely on crisis management of public concerns, the Ministry does not yet do pro-active consultation on a consistent basis. While there will always be a need to undertake consultation reactively in some cases (e.g., in response to unavoidable crises and unforeseeable events), reactive consultation is oftentimes more costly and not always as effective. Consultation done at an early stage before problems have emerged and public concerns solidify can significantly reduce the likelihood of crises developing and the need to commit the substantial resources required to address them.

In general, the Ministry should recognize that every abatement action and regulatory decision can potentially have an impact on the public, and undertake appropriate consultation measures. In many cases, this will require only minor efforts (e.g., informal contacts with key individuals); in other cases more extensive consultation will be necessary.

The Task Force concluded that the most important requirement for improving the Ministry's public consultation efforts is the establishment of a corporate policy to guide these efforts. This policy should clearly: define the Ministry's commitment to public consultation; outline the areas in which consultation should be used; and identify the appropriate consultation approaches and processes that can be employed. This policy should be supplemented by specific guidelines to

assist staff in the design and implementation of public consultation programs.

Effective implementation of a Ministry policy on public consultation will require a more efficient use of staff resources. Responsibility for public consultation within the Ministry needs to be clarified and procedures established for providing line staff responsible for consultation activities with access to required information and expertise. Training in consultation principles and approaches will be required to ensure that staff have the necessary knowledge and tools to do effective consultation. The Ministry may also want to utilize outside experts in public consultation to handle those tasks that either are particularly time consuming or require highly skilled expertise not available in the Ministry.

Finally, this policy will likely entail significant resource implications which need to be clearly identified. The Ministry already expends considerable dollars on its consultation activities, which in most cases are approved on a case by case basis. One purpose for establishing a policy is to define the boundaries of Ministry consultation efforts so that resource requirements can be identified and appropriately allocated.

The Task Force found the general consensus model of consultation outlined in the Niagara Institute report (and utilized in varying forms in the cases reviewed) to be extremely useful and applicable in certain situations. For instance, it can be used as an early step in a broader consultation process, providing a basis for developing consensus on some issues and a foundation for further consultation. A current example of how this approach has proven effective at the federal level is the Task Force on the Management of Chemicals (a direct outgrowth of the Niagara Institute project), which has recently developed a life cycle framework for the management of chemicals through a consensus

building effort involving a wide range of stakeholder interests.

The consensus model is also applicable as a dispute resolution process to be used when other attempts have failed because of seemingly intractable conflicts of interest. It was through such a process that the government succeeded after years of delay in implementing a new policy on beverage containers.

It is important to point out that the consensus model is not a panacea and clearly not applicable in situations such as emergencies which require immediate action or issues which are not negotiable. In supporting and encouraging a consensus approach to problem-solving, government must be prepared to accept consensus-based agreements when they are reached. By participating in consensus-building efforts, the Ministry can help to ensure that joint agreements are consistent with existing government policy and are, therefore, feasible to implement.

Increasingly, mediation is being used to resolve environmental issues. Mediation is one form of the consensus model, typically characterized by a neutral third party working to reach an agreement between conflicting parties.

RECOMMENDATIONS

Based on the review and conclusions presented in this report, the Task Force makes the following recommendations for improving the Ministry's public consultation efforts:

1. ADOPT A CORPORATE POLICY THAT ESTABLISHES THE MINISTRY'S COMMITMENT TO PUBLIC CONSULTATION, BASED ON THE PRINCIPLES AND CONCLUSIONS IN THIS REPORT.

This policy should clarify that the purpose in doing consultation is to obtain public input so that the Ministry can better fulfill its responsibility to act on the public's behalf, but is not an abrogation of this responsibility. The policy is intended to assist Ministry staff who, as public servants, need to maintain an awareness and appreciation of the public's views.

The policy should contain a statement of the Ministry's commitment to public consultation, the general scope of application, the types of consultation approaches which can be used and the applicability of each in terms of Ministry areas of responsibility.

2. IDENTIFY THE RESOURCES REQUIRED TO IMPLEMENT THE POLICY.

This assessment should include the identification of current Ministry resources (including staff with appropriate expertise) and staff training requirements.

3. OBTAIN PUBLIC COMMENT ON THE POLICY PRIOR TO ITS ADOPTION.

The consultation process employed should be consistent with the principles outlined in this report. Distribution of a discussion paper might be an appropriate means for

obtaining such input. Once adopted, the policy should be included in the Policy Manual and also given widespread distribution among the public in a more accessible format.

4. DEVELOP SPECIFIC GUIDELINES ON HOW TO DO PUBLIC CONSULTATION, TO SUPPORT IMPLEMENTATION OF THE POLICY BY MINISTRY STAFF.

These guidelines should provide specific guidance in the selection and application of appropriate consultation approaches, presented in a format easily accessible to staff (e.g., free of jargon).

5. PROCEED WITH ONGOING PUBLIC CONSULTATION INITIATIVES WHILE THE POLICY IS UNDER DEVELOPMENT, IN ACCORDANCE WITH THE PRINCIPLES OF EFFECTIVE PUBLIC CONSULTATION.

Assistance and guidance should be provided to Ministry staff responsible for ongoing public consultation activities.

6. GIVE PRIORITY TO THE DEVELOPMENT OF A PUBLIC CONSULTATION PROCESS TO BE USED IN SETTING ENVIRONMENTAL STANDARDS, ADDRESSING SPECIFIC ISSUES IDENTIFIED IN THIS REPORT.

7. ESTABLISH A MINISTRY WORKING GROUP TO COORDINATE IMPLEMENTATION OF THE ABOVE RECOMMENDATIONS.

This working group should be composed primarily of Ministry staff with expertise in public consultation.

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APPENDIX

NIAGARA INSTITUTE REPORT

Final

Task Force 2

21.6.85

PRINCIPLES AND PROTOCOL OF MEANINGFUL CONSULTATION ON ENVIRONMENT - ECONOMY ISSUES

The purpose of this document is to set forth the principles and protocol which should be adhered to by all participants in consultation if it is to be meaningful and effective with respect to environmental issues, especially where there are important linkages with the economy. They are proposed as a guide for all stakeholders - governments, business, labour, non-governmental organizations and others.

While they have been developed specifically in the context of environmental policies, we believe they recommend themselves for wider application. They should be recognized as a model to be adapted; all principles are not equally applicable to all consultation processes.

The principles deal with how the process of consultation should be structured; the manner in which stakeholder interests should participate; questions of resources, access to data and timing; consensus-building; and implementation.

These principles are intended primarily for problem-solving and policy development applications rather than environmental aspects of project siting for which other processes may be more appropriate. They are intended to complement - not replace - public consultation processes such as public hearings.

DEFINITIONS

Meaningful consultation is an ongoing dialogue among affected stakeholders, including government, aimed at obtaining all the relevant information, evaluating the available options and their related consequences, and providing an objectively balanced perspective to each stakeholder's decision making. A prime objective is to obtain consensus at each stage of the process.

Stakeholders are those groups who have a vital interest in the issue, will be directly affected by the outcome, and/or make an important contribution to its resolution.

Meaningful consultation is not a simple matter of bringing a diverse group of interested parties together and expecting them to immediately and automatically develop solutions to complex issues. There has to be time for the participants to get to know each other, to listen and understand respective positions, and to develop respect which can grow into trust in that particular environment. Finding the common ground of consensus and building on that commonality to reach a solution requires time.

It can be demonstrated that programs for which appropriate time was not allowed for in the developmental stage to seek consensus and test solutions, have suffered inordinately in the implementation stage. It is our contention that the time spent on a project in the developmental stage will materially reduce the time, costs, hassles, delays and disagreements at the implementation stages.

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Good consultation relationships built up over time also support more rapid and effective co-operative responses to urgent situations such as environmental accidents.

Consultation may arise from or be an alternative to confrontation among stakeholders. In either case, the right kind of consultation can help ensure that the issues are appropriately defined, that constructive conflict-resolution techniques are adopted, and that solutions are developed which are relevant to the interests of all stakeholders.

PRINCIPLES OF CONSULTATION

Based on these considerations, the following 25 principles are recommended for the process, participants, etiquette, resources, data, timing and consensus-building dimensions.

a. Process and Participants

1. Consultation may be initiated by any stakeholder or group or stakeholders, and need not necessarily be initiated by governments.
2. The decision to consult must be motivated by a genuine desire to obtain input and a sincere commitment to objectively consider the views received. Forthrightness and clarity in stating the purpose of the consultation is imperative to avoid time wasting debate. The absence of predetermined non-negotiable solutions is essential.
3. Policy development/problem solving consultation should only take place on things where there is room to move. There must at the outset be a clear statement of the issue to be addressed; of the objective(s) of the consultation; and of the constraints, if any. If it is necessary for prior constraints to be identified or policy guidance to be given, this should be clearly set forth and recognized by all participants in advance.
4. Consultation should, as a general rule, take place under the auspices of, and at all stages be chaired by, an independent facilitator who does not represent major stakeholder interests and is perceived by all as a neutral third party. In some circumstances, it may be appropriate for a government agency to play the facilitator role. The purpose of the independent facilitator is to build trust and ensure focus on the specific problem. This would include meeting with possible participants to understand positions and shade an agenda; making contacts and enquiries to assure appropriate stakeholder representation; promoting the building of consensus; and ensuring appropriate monitoring and feedback.
5. Consultative groups should be kept as small as possible while at the same time involving those who have a contribution to make.

b. Etiquette

6. Stakeholders should be consulted early in the process while all options are still open.
7. There should be prior consultation on the process itself, the venue, the framing of appropriate questions, and on the first agenda.

8. The consultation must be focussed at a meaningful level - industry (or issue) specific - dealing with real things the stakeholders understand. Consultation should justify itself by concrete results and real value to each stakeholder from their participants.
9. The stakeholders must be convinced that the consultation process recognizes and accommodates their interests, and so improves decisions affecting them.
10. The process should be tailored to the specific policy objective and the stakeholders directly concerned. Each stakeholder's participation should be commensurate with the nature of the issue, its direct impact on the stakeholder and/or their ability to contribute to its resolution.
11. The process must be consistent with the mandate and roles of the various stakeholders. Sometimes adjustments will be required to ensure that stakeholders can participate on a basis which is compatible with their institutional status.
12. Each participant must be committed to seeking constructive integration of the "whole", not simply the advocacy of narrow interests. Governments, and different government departments and agencies, should recognize that they are stakeholders as well as decision makers; and that other stakeholders are decision makers too. It is recognized that government has special status as a decision-maker. This need not conflict with governments working co-operatively with other stakeholders, which is a fundamental tenet of consultation.
13. Participants must clearly understand the positions of stakeholder interests they are drawn from and make sure those views are effectively presented in the course of the consultation process. In turn, there must be mutual respect for the legitimacy and point of view of all participants.
14. The consultation process should be viewed as ongoing, as tangible evidence of the mutuality and interdependence of stakeholder interests.

c. Resources, Date and Timing

15. A genuine consultation effort demands a commitment of resources from all sides. Adequate resources must be found to support a meaningful consultation effort. Appropriate arrangements must be put in place from the beginning of the consultation process.
16. All parties must have reasonable access to all relevant information. A decision by any party to withhold relevant information would have a negative impact on the outcome of the consultation process. Where confidential information is at issue, mechanisms must be found which both protect confidentiality and ensure the consultation process is not prejudiced by missing critical information. The use of an independent third party in the Workplace Hazardous Materials Information System (WHMIS) illustrates one such mechanism.
17. A consultation process must be given an adequate period of time to work, without arbitrary and unrealistic deadlines. There should be time for the stakeholders to get to know each other, listen to and understand respective positions, to develop respect which can grow into trust, and to test that trust.

18. The time frame for consultation must seek a balance between the time constraints on all parties. Everyone's need for an early answer must take into account each stakeholder's need for time to consult constituents and/or the public, and to respond. There should be enough time for the stakeholders to secure and maintain their respective constituent group's support; to verify either facts or statements; to test potential solutions against a broader audience; and to report out, as the process evolves.
19. Emergency situations lack the luxury of time, but it should be recognized that a strong consultation process will ensure a co-operative base for multiple stakeholder responses when emergency situations do arise.

d. Consensus-building

20. Solutions should be developed through consensus and not through the democratic voting process. All stakeholders should have an equal opportunity to present their views and to be heard in the context of the consensus building process.
21. The approach should be to seek common ground and build on it. The process should start by identifying those items everyone can agree on, and setting aside for the time being those on which agreement may be more difficult.
22. The process must encourage the building of trust among stakeholders, including clarifying values, building a common data base that various stakeholders agree is accurate, developing norms for co-operation, and applying these to specific problems.
23. It must be recognized that any consensus reached by this process involves compromise and flexibility from all participants and thereby interlinks the issues to form an overall consensus. The overall consensus, therefore, must be regarded as an entity. Any unilateral change to the implementation of the consensus would require a re-evaluation by all the affected stakeholders.
24. When the results of consultation require legislative implementation, the stakeholders should clearly understand how their decisions will fit into any existing legislative framework.
25. In all cases, stakeholders expect feedback from other stakeholders, particularly government, clearly explaining the basis for decisions which are taken.



